

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

AMERICAN SPIRIT AND CHEER
ESSENTIALS, INC., ROCKSTAR
CHAMPIONSHIPS, LLC, JEFF & CRAIG
CHEER, LLC, d/b/a JEFF AND CRAIG
CAMPS, and ASHLEY HAYGOOD,
Individually and on Behalf of all Others
Similarly Situated,

Plaintiffs,

v.

VARSITY BRANDS, LLC, BSN SPORTS,
LLC, VARSITY SPIRIT, LLC, STANBURY,
LLC, HERFF JONES, LLC, BAIN CAPITAL,
LP, CHARLESBANK CAPITAL
PARTNERS, LLC, VARSITY BRANDS
HOLDING CO., INC., VARSITY SPIRIT
FASHION & SUPPLIES, LLC, U.S. ALL
STAR FEDERATION, INC., USA
FEDERATION FOR SPORT CHEERING,
d/b/a USA CHEER, VARSITY INTROPIA
TOURS, LLC and JEFF WEBB,

Defendants.

CIVIL ACTION

FILE NUMBER:

2:20-cv-02782-SHL-atc

**MEMORANDUM OF FACT AND
LAW IN SUPPORT OF
MOTION TO APPOINT INTERIM
LEAD CLASS COUNSEL**

INTRODUCTION

Robert A. Falanga is the attorney to serve as Interim Lead Class Counsel for the putative classes in this case.

BACKGROUND

For perhaps years, various parties across the United States considered antitrust action against one or more of the Defendants. Indeed, several even filed complaints in various courts, including in the Western District of Tennessee. Particular to the pending motion, on July 24, 2020, the *American Spirit* Plaintiffs filed their class action complaint in the Northern District of Georgia. After addressing the *American Spirit* complaint in context with other filed cases, federal District Court Judge Steve C. Jones reached the logical—even *inescapable*—conclusion that *American Spirit* is the first-filed pending case. (2:20-cv-02782-SHL-atc, ECF No. 56 at 25-27). Simultaneously, Judge Jones found compelling justification and legal support for having the matters decided in the Western District of Tennessee. (*Id.*; *id.* at n. 23). Consequently, the Northern District of Georgia transferred *American Spirit* to this Court.

From the beginning, however, the *American Spirit* Plaintiffs' lead counsel was and is Robert A. Falanga. No other firm has or does represent their interests with regard to **key aspects** such as:

- (1) Whether gyms like Fusion Elite (named plaintiff in another pending lawsuit against Varsity Brands, LLC) *actually conspire with* the Defendants via payola kickbacks not shared with the parents who are paying for the apparel, merchandise and services. (2:20-cv-02782-SHL-atc, ECF No. 1 at ¶ 246);
- (2) To what extent the corporate owners of Varsity Brands, LLC knowingly participate. (*Id.* at ¶ 14); and

- (3) To what extent certain Defendants monopolize *non-cheer markets*. Those markets include markets for scholastic athletic equipment, apparel, merchandise and graduation regalia. (2:20-cv-02782-SHL-atc, ECF No. 1 at ¶ 251).

Consequently, appointing Robert A. Falanga as Interim Lead Counsel for the Plaintiffs' putative classes is essential. Otherwise, these claims may not be fairly prosecuted.

LEGAL STANDARD

Under Fed. R. Civ. P. 23(g), the relevant considerations include:

- (i) the work counsel has done in identifying or investigating potential claims in the action;
- (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
- (iii) counsel's knowledge of the applicable law; and
- (iv) the resources that counsel will commit to representing the class.

Moreover, the court "may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." *Id.*

DISCUSSION

Each of the aforementioned considerations militate in favor of appointing Robert A. Falanga as Interim Lead Class Counsel. Indeed, as indicated by the *American Spirit* Plaintiffs' complaint, proposed Interim Lead Class Counsel Falanga has done significant work identifying witnesses and investigating the potential claims. (2:20-cv-02782-SHL-atc, ECF No. 1.; *see also* Ex. "A" at ¶ 1). Proposed Interim Lead Class Counsel Falanga and the attorneys of his firm have experience both prosecuting and defending statutory tort class actions and other complex claims going back to 1989. (*Id.* at ¶ 2). Proposed Interim Lead Class Counsel Falanga and his team have

sufficient knowledge of applicable law including Federal and Georgia “RICO” laws, the Sherman and Clayton Acts, as well as the Federal Rules of Civil Procedure and the Local Rules of the Western District of Tennessee. (*Id.* at ¶ 3). Proposed Interim Lead Class Counsel Falanga and his firm have committed significant and adequate resources to representing the purported Classes. (*Id.* at ¶ 4). Finally—and perhaps most importantly—***no other potential Lead Class Counsel represents the American Spirit Plaintiffs’ interests in the key aspects mentioned above.*** (*Id.* at ¶¶ 249, 14, 251).

CONCLUSION

Appointing Attorney Robert A. Falanga as Interim Lead Class Counsel is a logical choice.

This 3rd day of November, 2020.

Respectfully submitted,

s/ Robert A Falanga
Robert A. Falanga, Esq.
Attorney Bar No. 254400
Attorney for Plaintiffs and their Putative
Classes
Motion for admission
pro hac vice forthcoming

s/ Kobelah Svensen Bennah
Kobelah Svensen Bennah
Attorney Bar No. 378113
Attorney for Plaintiffs and their Putative
Classes

LAW OFFICES
FALANGA & CHALKER
11200 Atlantis Pl #C
Alpharetta, GA 30022
Phone: (770) 955-0006
Fax: (770) 955-2123
robert@falangalaw.com
kobelah@falangalaw.com